

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 7, 2005

IN RE:

PETITION OF TENNESSEE WASTEWATER
SYSTEMS, INC. TO AMEND ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY

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DOCKET NO. 04-00123

ORDER APPROVING PETITION TO AMEND
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA"), at a Hearing held on July 12, 2004, to consider the *Petition of Tennessee Wastewater Systems, Inc to Amend its Certificate of Convenience and Necessity* (the "Petition") requesting that the Authority expand its service territory to include a portion of Shelby County, Tennessee, known as Spring Creek Ranch.

Legal Standard for Granting Certificate of Public Convenience and Necessity

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Tennessee Regulatory Authority. The procedure for obtaining a certificate of convenience and necessity ("CCN") evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a) (2004), which states as follows:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the

same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate

Background

On April 6, 1994, Tennessee Wastewater Systems, Inc.¹ received a CCN in Docket No. 93-09040² from the Tennessee Public Service Commission to provide wastewater service to the Oakwood Subdivision in Maury County. Since that time, through various other dockets, the Company has been granted approval to expand its service territory to include other areas in Tennessee.

The Petition

On April 22, 2004, Tennessee Wastewater Systems, Inc. ("Tennessee Wastewater" or the "Company") filed the *Petition* to amend its CCN to expand its service area to include a portion of Shelby County, Tennessee, known as Spring Creek Ranch. A map of the area proposed for inclusion within the Company's service area was attached to the *Petition* as Exhibit A. The *Petition* included a rate schedule describing the residential rates for sewer service for the proposed service area as follows:

Total Monthly Charge	\$35.11
Non-Payment Fee	5%
Disconnection Fee	\$10
Reconnection Fee	\$15
Returned Check Fee	\$20
Access Fee	\$84/year

The *Petition* also included a rate schedule describing the rates for commercial sewer service with, and without, food service. The monthly rate schedule is based on the daily design flow

¹ In Docket No. 03-00518, by Order dated February 19, 2004, On-Site Systems, Inc. changed its name to Tennessee Wastewater Systems, Inc.

² See *In re The Application of On-Site Systems, Inc. for a Certificate of Convenience and Necessity to Provide Sewage Collection, Treatment and Disposal for a Proposed Development in Maury County*, Docket No. 93-09040, Order (April 6, 1994)

expected from the type of establishment being served.

The minimum monthly sewer rate applicable to a commercial customer without food service is \$75 for the first 300 gallons per day of design flow expected.³ For each additional 100 gallons up to 1,000 gallons per day design flow expected, an additional charge of \$15 per month per 100 gallons will be levied. For design flows expected over 1,000 gallons per day, and up to 3,000 gallons per day, the sand-gravel filter sewer treatment charge is \$140 per 1,000 gallons for drip irrigation and \$165 per 1,000 gallons for point discharge. For design flows expected over 1,000 gallons per day, and up to 3,000 gallons per day, the lagoon sewer treatment charge is \$116 per 1,000 gallons for drip irrigation and \$140 per 1,000 gallons for point discharge. Customers with treatment and disposal by another entity will pay a \$73 per month minimum charge plus pass through costs from the other entity. The monthly charge for all systems exceeding design daily flows over 3,000 gallons per day is \$116 per 1,000 gallons.

A surcharge will apply for excess water usage above the expected design flow as follows: For 1 gallon to 1,000 gallons above expected design flow, the surcharge is \$175. For 1,001 gallons to 2,000 gallons above the expected design flow, the surcharge is \$200. And for excess usage over 2,000 gallons, the surcharge is \$200 per 1,000 gallons. Other fees include:

Non-Payment Fee	5% Penalty
Disconnection Fee	\$10
Reconnection Fee	\$15
Returned Check Fee	\$20
City of Coopertown Franchise Fees	3%

The minimum monthly sewer rate applicable to a commercial customer with food service is \$100 for the first 300 gallons per day of design flow expected.⁴ For each additional 100 gallons up

³ Except off-site which will have a \$73.00 minimum plus pass through costs.

⁴ Except off-site which will have a \$94.00 minimum plus pass through costs

to 1,000 gallons per day design flow, there is a charge of \$18 per month per 100 gallons. For 1,000 gallons up to 3,000 gallons per day design flow, the sand-gravel filter sewer treatment charge per 1,000 gallons is \$170 for drip irrigation and \$192 for point discharge. For lagoon sewer treatment, the charge per 1,000 gallons is \$142 for drip irrigation and \$163 for point discharge. Customers with treatment and disposal by another entity will pay a \$94 per month minimum charge plus pass through costs from the other entity. For design daily flows exceeding 3,000 gallons, the charge for all systems is \$142 per 1,000 gallons. A surcharge will apply for excess water usage above the expected design flow. For 1 gallon to 1,000 gallons above expected design flow, the surcharge is \$210. For 1,001 gallons to 2,000 gallons above expected design flow, the surcharge is \$220. And for usage over 2,000 gallons above expected design flow, the surcharge is \$220 per 1,000 gallons.

Other fees include:

Non-Payment Fee	5% Penalty
Disconnection Fee	\$10
Reconnection Fee	\$15
Returned Check Fee	\$20
City of Coopertown Franchise Fees	3%

In its *Petition*, Tennessee Wastewater contends that neither Shelby County nor the Town of Collierville, Tennessee, have the desire or plan to provide sewer service to the proposed service area.⁵ In support of this contention, Tennessee Wastewater attached to its *Petition* a letter dated March 11, 2004, from William J. Kilp, the Director of the Department of Public Services for the Town of Collierville stating that “the Town of Collierville does not intend to provide sewer service for the Spring Creek Ranch 11 lot subdivision recently submitted for development approval. Should conditions warrant a change, we do however, reserve the right to reassess the situation and

⁵ *Petition*, p 1 (April 22, 2004)

possibly provide sewer service to future development phases.”⁶ Also attached to Tennessee Wastewater’s *Petition* was a letter dated March 10, 2004, from Michael E. Oakes, P.E., Shelby County Engineer, stating that “Shelby County does not, and has no future plans to, provide sewer service to the Spring Creek Ranch area.”⁷ The *Petition* also states that the proposed service area is outside the corporate limits of the Town of Collierville but within the Town of Collierville’s planning area.⁸

The July 12, 2004 Hearing

Pursuant to Tenn. Code Ann. § 65-4-203(b) (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on June 24, 2004. At the Hearing held on July 13, 2004, Charles Pickney, Jr., President of Tennessee Wastewater Systems, Inc., participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer assigned to this docket. William J. Kilp, Public Services Director for the Town of Collierville, Tennessee, appeared at the Hearing and requested that the Hearing Officer grant the Town of Collierville two weeks to provide additional testimony regarding Tennessee Wastewater’s *Petition*.⁹ At the conclusion of the Company’s presentation, Mr. Kilp stated that the Town of Collierville misunderstood the *Petition* to request authorization to serve the entire Spring Creek development area rather than the 11 lots (including approximately 14 homes) proposed for inclusion in the Company’s service area. Mr. Kilp stated that the Town of Collierville would not object to the expansion of the Company’s CCN to include the 11 lots identified in the *Petition*.¹⁰

⁶ Letter from William J. Kilp, Director, Department of Public Services, Town of Collierville to Gary Thompson, Boyle Investment Company (March 11, 2004), *Petition* [unnumbered attachment] (April 22, 2004)

⁷ Letter from Michael E. Oakes, P.E., County Engineer to Gary Thompson, Boyle Investment Company (March 10, 2004), *Petition* [unnumbered attachment] (April 22, 2004)

⁸ *Id.* See Tenn. Code Ann. § 6-58-101 (2004) *et seq.* which establishes a process for planned growth areas and urban growth boundaries for municipalities in the State of Tennessee

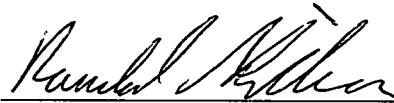
⁹ Transcript of Proceedings, p. 3 (July 13, 2004).

¹⁰ Transcript of Proceedings, pp. 7-9 (July 13, 2004)

Upon the presentation of Tennessee Wastewater's proof in this case, the evidentiary record as a whole, and in light of the legal standard set forth in Tenn. Code Ann. § 65-4-201(a) (2004), the Hearing Officer granted Tennessee Wastewater's *Petition of Tennessee Wastewater Systems, Inc to Amend its Certificate of Convenience and Necessity*.

IT IS THEREFORE ORDERED THAT:

1. The *Petition of Tennessee Wastewater Systems, Inc to Amend its Certificate of Convenience and Necessity* to expand its service territory to include 11 lots located in a portion of Shelby County, Tennessee, known as Spring Creek Ranch, as shown in the map attached as Exhibit A to the *Petition* is approved.
2. Tennessee Wastewater Systems, Inc.'s rates for wastewater services to Shelby County, Tennessee, known as Spring Creek Ranch, shall be in compliance with the rate schedules attached to its *Petition* and as set forth in this Order.



Randal Gilliam, Hearing Officer